

Engaging Tribal Nations and Urban Indian Communities in Child Welfare Redesign

A publication of the National Indian Child Welfare Association | December 2021

This publication was funded by The Annie E. Casey Foundation, Inc. The findings and conclusions presented in this report are those of the author(s) and respondents alone and do not necessarily reflect the opinions of the Foundation. We thank them for their support.

American Indian and Alaska Native (AI/AN) children and families face great challenges in receiving the services they need to heal from trauma and keep their children safe. These challenges include significant barriers to structural supports such as securing adequate housing, quality education and job training, securing gainful employment, accessing appropriate health services, securing quality and affordable childcare, and having reliable access to healthy foods (Jernigan, V.B.B., Huyser, K.R., Valdes, J. & Simonds, V.W., 2017; National Congress of American Indians, n.d.; National Public Radio, Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health, 2017; Truschel, L. and Novoa, C., 2018; and United States Department of Commerce, 2019). To address these challenges successfully, AI/AN families need the assistance of their tribal nations whether they are living on tribal lands or within off-reservation areas such as urban communities. This includes the help of urban Indian community agencies too. Tribal nations and urban Indian community agencies have critical information that can inform which services to provide and how best to provide those services, as well as knowledge about extended families that can provide support and care to parents and children.

This briefing paper describes the importance of engaging with tribal nations and urban Indian community agencies and the best approaches related to redesign of child welfare systems. In this briefing paper, child welfare redesign refers to fundamental reorganization and structural change of federal and state child welfare policies and finance systems. When discussing the child welfare system, we are referring to federal policies and related finance system that shape and fund state and tribal child welfare systems. Non-native policymakers, administration officials, and advocacy organizations all have a role in helping ensure tribal nations and urban Indian community agencies are fully engaged in policy reform, which is critical to establishing a redesigned child welfare system that serves the unique needs of AI/AN children and families.

Why Is Tribal Engagement So Important?

Effective tribal engagement ensures that policy reform efforts will be more likely to meet their goals in tribal and urban Indian communities. Child welfare is a highly regulated program area and tribal and state child welfare programs are required to follow numerous federal statutes and regulations. Where tribes have agreements with states to operate federal programs, they may be asked to meet state policy requirements too. Urban Indian community agencies often contract with local county or municipal governments and are asked to meet state and local policy requirements. Federal child welfare policies address the full continuum of child welfare interventions from intake to

permanency and compliance with the requirements is part of the agreement that tribes and states make to receive federal funding. As policymakers contemplate policy changes, they need to understand how policy requirements may impact tribal nations and AI/AN children and families. Assumptions about the impact of policy reforms in non-Native communities may not be valid in tribal communities where economies of scale, cultural approaches, service delivery, jurisdictional schemes, and the causes and scope of child maltreatment in tribal families often look different than in mainstream communities.

Tribal engagement and consultation are appropriate responses to honoring the government-to-government relationship that tribal nations have with the federal government. Tribal nations are recognized under the United States Constitution as distinct governments and federal law and court decisions for over 200 years have recognized the government-to-government relationship between tribes and the federal government. Furthermore, many federal and state governments have established tribal consultation policies to guide policy development that impacts tribal communities. Many state governments also recognize tribal nation sovereignty and have established numerous laws and inter-governmental agreements that recognize tribal nation governmental status. While urban Indian community agencies do not have the political status of tribal nations, they nonetheless are key to informing state and local officials on how to respond to AI/AN populations that live in urban communities. As legislative and administrative policy makers consider policy changes, engaging tribal nations and urban Indian community agencies early and providing opportunities for meaningful consultation are important to establishing policy reforms that will provide effective and sustainable solutions and with tribal nations support an appropriate government-to-government relationship.

The child welfare system in the United States has long been criticized for failing to produce better outcomes. American Indian and Alaska Native children and families are one of the populations that have faced the greatest challenges in state child welfare systems as evidenced by disparate treatment related to major decision areas in child welfare and disproportionate placement in foster care (National Indian Child Welfare Association [NICWA], 2019). These include the number of child maltreatment investigations ordered, number of child abuse and neglect allegations substantiated, and number of children placed in foster care. The problems of disparate treatment are not new and have been present for several decades. The policy solutions to these long-term problems require a fundamental rethinking of how child welfare should be restructured to best serve AI/AN children and families. This requires greater understanding of the issues that impact the stability of AI/AN families and the safety of their children.

In order to develop solutions that will be effective and sustainable, tribal nations and urban Indian community agencies must be engaged more effectively in the development of these solutions with federal and state policymakers. Tribal child welfare systems, several which have decolonized their child welfare programs

Engaging Tribal Nations and Urban Indian Communities in Child Welfare Redesign

A publication of the National Indian Child Welfare Association | December 2021

to reflect community values and culture, are reducing rates of children in out-of-home care and strengthening families with highly coordinated and comprehensive services (NICWA, 2018). These tribal child welfare examples have valuable lessons for policymakers as they consider fundamental changes to the child welfare system in the United States, and meaningful engagement with tribal nations and urban Indian community leaders is a necessary step in informing policy change efforts.

Promising Practices in Tribal Engagement

As federal and state officials contemplate policy changes, there are numerous examples of how federal and state governments, working with their tribal partners, have developed policies and practices to promote appropriate engagement with tribal nations (Simmons, 2014). The fundamental principles in these examples are 1) respect for tribal sovereignty and the recognition of tribal nations as governmental entities, 2) support for tribal self-determination in the development and governance of tribal programs and services, 3) recognition of tribal input, feedback, and resources as value added components to policymaking, and 4) recognition that connection to tribal identity and culture is a valuable resource in healing tribal families and children from trauma, developing resilience, and creating protections against at-risk behaviors.

The federal government and a number of states have developed policies to help their leadership and staff engage with tribal governments in an effective manner. Over several administrations, the federal government has reaffirmed policy that describes its government-to-government relationship with tribal nations. This includes policies that acknowledge tribal nations as sovereign governments and the intent of federal and state agencies to conduct their relationships with tribal nations in that spirit. This is often accompanied by policies that instructs federal and state officials on how to consult with tribal nations on policy issues that impact their citizens. Having high level recognition of tribal governmental status and policies that establish principles for engaging and consulting with tribal nations support improved relationships and greater likelihood that federal and state governments will engage tribal nations in a manner that is appropriate.

Effective consultation with tribal nations is a necessary element of policymaking to honor the governmental status of relationships between tribal and federal and state governments, but also to better understand the scope of child welfare issues being addressed, develop effective solutions, and ownership by all parties. For many years, tribal nations in Washington State experienced consultation processes implemented by the state that were inconsistent from one department to another and failed to offer enough time or context for tribal leaders to consider the appropriate solutions. Too often, the result was deteriorating relationships with tribal nations and failed policy solutions.

In response, tribal leaders developed a new structure for tribal-state consultations with state departments through the establishment of the Centennial Accord (Washington Governor's

Office of Indian Affairs, n.d.). The new consultation structure provided for pre-meetings that allowed tribal leadership to learn about the background and context of proposed policy changes before official consultation occurred. It also emphasized having consultations in different tribal locations whenever possible and ensuring all tribal nations have an opportunity to participate. The revised consultation process additionally required that state officials participating in the consultation were from the highest levels within the department in order to honor the government-to-government relationship and facilitate decision making. Departments within the state government developed their own tribal consultation policies that followed the Centennial Accord, such as the Washington State Department of Social and Health Services and their 7.01 policy (Washington Department of Social and Health Services, n.d.).

The development of advisory committees at federal and state department levels has provided tribal nations with more regular opportunities to identify and discuss policy issues that are important to their communities. In the federal Department of Health and Human Services (DHHS), the Secretary's Tribal Advisory Committee (STAC) has tribal leaders appointed by tribes in their respective regions and several at-large positions (United States Department of Health and Human Services, n.d.). Federal department officials are also required to attend STAC meetings each quarter. During the meetings, tribal leadership have an opportunity to review policies and work being conducted by the different operating divisions within the department and bring forward policy issues for discussion with federal officials. Tribal leaders conduct caucuses prior to STAC meetings to review and discuss priority issues and organize the presentation of those issues to DHHS officials. Often, issues that require more intensive discussion and follow up may be referred to a joint workgroup of the STAC that will bring the issues and proposed solutions back to the full STAC membership for a decision. DHHS officials also provide updates on work they are doing within their operating divisions and report out on requests made by STAC tribal leadership in previous meetings.

In the State of Oregon, the Department of Human Services (DHS) and the nine Oregon tribal nations participate in an Indian Child Welfare Act Advisory Committee that meets on a quarterly basis (Oregon Department of Human Services, n.d.). At the committee meetings they focus on child welfare issues that impact AI/AN children and families at risk for involvement with the State of Oregon child welfare system. The issues addressed include policy, practice, data, and programs issues. At different times the committee has established subcommittees to assist DHS and Oregon tribal nations on different special projects and topics. The committee ensures that tribal nations in Oregon have a regular forum to speak with DHS leadership on priority issues that need attention and craft solutions that will be tribally driven and supported.

Tribal nations have often struggled to maintain positive relationships with their federal and state partners, especially in consideration of the long history of assimilationist policies that sought to remove AI/AN children from their families and

Engaging Tribal Nations and Urban Indian Communities in Child Welfare Redesign

A publication of the National Indian Child Welfare Association | December 2021

communities and assimilate them to mainstream ways of thinking and being. While there are many examples of how tribal, federal, and state governments successfully established new child welfare policies together, the consequences of the long history of failed policy efforts by federal and state governments are still apparent today. Disproportionate placement of AI/AN children in state foster care systems and disparate treatment of AI/AN families in state child welfare systems are current day indicators of the need for improved intergovernmental relationships (NICWA, 2019).

Tribal leadership and community advocates in Canada and the United States have been increasing their calls for truth and reconciliation in child welfare to acknowledge the disastrous effects of assimilationist policies and support a path to reconciliation between tribal nations and federal and state governments. Underlying this truth and reconciliation movement is the belief that fundamental change in child welfare for AI/AN children and families cannot happen or be sustained long term without a full understanding of the consequences of past efforts and transformation of current tribal-federal-state relations (Blackstock et al., 2006). This example of tribal engagement is necessarily more long term and intensive in nature but has the potential for high value outcomes that can transform relationships and policy change efforts in the future.

Conclusion

Child welfare systems present several major challenges for AI/AN families as they seek to heal from trauma and improve their capacity to keep their children safe. While some of the issues that they present are shared by other populations in the child welfare system, the scope and characteristics of the issues and best ways to address challenges are unique. Tribal nations and urban Indian community leaders are in the best position to understand and shape responses that will be effective and heal families and children from historic and intergenerational trauma. To avoid the mistakes of the past and develop effective responses to the needs of AI/AN children and families, federal and state policymakers need to engage tribal nations and urban Indian community leaders.

References

Blackstock, C., Cross, T., George, J., Brown, I., & Formsma, J. (2006). *Reconciliation in Child Welfare: Touchstones of Hope for Indigenous Children, Youth, and Families*. First Nations Child & Family Caring Society of Canada / Portland, OR: National Indian Child Welfare Association. https://fncaringsociety.com/sites/default/files/reconciliation_in_child_welfare_booklet_-_2019_0.pdf.

Jernigan, V.B.B., Huyser, K.R., Valdes, J. & Simonds, V.W. (2017). Food Insecurity Among American Indians and Alaska Natives: A National Profile Using the Current Population Survey—Food Security Supplement. *Journal of Hunger & Environmental Nutrition*, 12(1). <https://www.ncbi.nlm.nih.gov/pmc/articles/>

[PMC5422031/](https://pubmed.ncbi.nlm.nih.gov/35422031/).

National Congress of American Indians. (n.d.). Indian Country Demographics. <https://www.ncai.org/about-tribes/demographics>.

National Indian Child Welfare Association. (2018). Tribal Leadership Series: Funding Child Welfare Services. <https://www.nicwa.org/wp-content/uploads/2018/11/Funding.pdf>.

National Indian Child Welfare Association. (2019). Disproportionality in child welfare. <https://www.nicwa.org/wp-content/uploads/2019/10/2019-AIAN-Disproportionality-in-Child-Welfare-FINAL.pdf>

National Public Radio, Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health. (2017) Discrimination in America: Experiences and Views of Native Americans. <https://legacy.npr.org/documents/2017/nov/NPR-discrimination-native-americans-final.pdf>.

Oregon Department of Human Services. (n.d.). Indian Child Welfare Act Advisory Committee. <https://www.oregon.gov/dhs/children/advisory/pages/index.aspx>.

Simmons, D. (2014). Improving the Well-being of American Indian and Alaska Native Children and Families through State-Level Efforts to Improve Indian Child Welfare Act Compliance. State Policy and Advocacy Reform Center. <http://childwelfaresparc.org/brief-improving-the-well-being-of-american-indian-and-alaska-native-children-and-families-through-state-level-efforts-to-improve-indian-child-welfare-act-compliance/>.

Truschel, L. and Novoa, C. (2018). American Indian and Alaska Native Maternal and Infant Mortality: Challenges and Opportunities. Center for American Progress. <https://www.americanprogress.org/issues/early-childhood/news/2018/07/09/451344/american-indian-alaska-native-maternal-infant-mortality-challenges-opportunities/>.

United States Department of Commerce, Census Bureau. (2019). 2019: ACS 1-Year Estimates Selected Population Profile in the United States (American Indian and Alaska Native profile). Table ID: S0201. <https://data.census.gov/cedsci/table?q=S0201&tid=ACSSPP1Y2019.S0201>.

United States Department of Health and Human Services. (n.d.). Secretary's Tribal Advisory Committee. <https://www.hhs.gov/about/agencies/iea/tribal-affairs/about-stac/index.html>.

United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. (2013). Best Practices in Tribal-State Consultations: Findings From Washington. https://www.cms.gov/Outreach-and-Education/American-Indian-Alaska-Native/AIAN/State-Consultation-Additional-Resources/CMS-Task-E-Report_WA.pdf.

Washington Department of Social and Health Services. (n.d.). Administrative Policy No. 7.01. https://www.dshs.wa.gov/sites/default/files/oip/documents/AP7.01_0309.pdf.

Washington Governor's Office of Indian Affairs. (n.d.). Centennial Accord. <https://goia.wa.gov/relations/centennial-accord>.